IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 77 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOVINDBHAI HARIBHAI PATEL - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR YOGESH S LAKHANI for Appellant(s) : 1,
MS HB POONANI PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 05/12/2007

ORAL JUDGMENT

1.0 This appeal arise out of the judgment and order dated 9th January, 1997 rendered by the

learned Additional Session Judge, Mehsana in Sessions Case No.237 of 1995.

2.0 The appellant, herein, was original accused who was by the impugned judgment convicted for offence punishable under Section 498(A) of the Indian Penal Code as well as Section 306 of the Indian Penal Code. He was sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.500/- as well as to undergo rigorous imprisonment for a period of seven years and to pay fine of Rs.1,000/- respectively, for the said offences. Substantive sentences were, however, made concurrent.

3.0 It is not in dispute that wife of the appellant Lakshmi died unnatural death on 16.06.1995. From the charge Exhibit-7 framed by the learned trial Judge it can be seen that the case of the prosecution was that the appellant used to regularly beat his wife Lakshmi saying that I don't like you and why don't you burn

yourself. He had thereby committed offence punishable under Section 498(A)of the Indian Penal Code. It was further alleged that Lakshmi committed suicide sometime on 16.06.1995 and her dead body was found at Police Parade Ground, Mehsana. Lakshmi committed suicide by consuming poison on account of the daily beating and taunting by the appellant.

4.0 To prove the charge against the appellant, the prosecution examined several witnesses and produced certain documents. In this case, two defence witnesses were also examined on behalf of the appellant and certain letters were also produced on record.

5.0 The complainant-Mahendrabhai Kantilal Patel, who is brother of the deceased Lakshmi, was examined as P.W.-3 at Exhibit-28. In his deposition he has stated that his sister Lakshmi got married about six years before the date of the incident. For the first four years of the marriage, she was residing in joint family.

About one year and a half before the incident, Lakshmi and her husband started residing separately. About one year before the incident, Lakshmi had come to his house and told him that her husband is torturing her and he has driven her out of house. She stayed with him for about ten months. She had come with her son. During this period, there was no communication from her in-laws. After about ten months of stay, he along with his uncle Shantilal Joitaram Patel persuaded Lakshmi and dropped her to Kelisana(i.e. at her husband's house). They first contacted Jayantibhai Shantibhai Patel, one Haribhai Mangaldas Patel and two other residents of the village in whose presence, the appellant stated that he will not beat Lakshmi in future. Sometime, thereafter, he received a letter from Lakshmi, requesting him to see Lakshmi's son and to bring some clothes for him. Upon which the witness went to Kelisana at that time his sister cried and told him that the accused comes late at night and beats her. On that day, his brother-in-law came home at 3:00 clock and the witness,

admonished him and told him not to do so again in future. This happened about four or five days before the incident. On the day of incident, when he was at home, police came in a car to take him. He was taken to Civil Hospital where dead body of his sister was kept in the postmortem room. He identified her. He was shown a note which contained narration of cruelty by her husband on his sister. He identified handwriting of his sister. This note was exhibited at Exhibit-29. He also produced a letter along with a cover which, according to him, was written by his sister and was received by him. The cover and letter were exhibited at Exhibit-30 and 31.

5.1 In his cross-examination, he showed ignorance about the displeasure of his sister on account of being allotted a field away from the house, as she wanted one which was close by. He could not produce the letter which, according to him, was received from his sister a few days before the incident. He admitted that in the complaint he had not specified that Lakshmi had

“while serving water” narrated to him that her husband is treating her with cruelty.

6.0 P.W.-4-Shantilal Joitaram Patel was examined at Exhibit-37. He had accompanied the complainant-Mahendra to drop Lakshmi back to Kelisana after Lakshmi stayed with the complainant for about ten months. He also supported the version of the complainant-Mahendra with respect to Lakshmi having come to the complainant's house and stayed there for a substantial period after which they had dropped her back to her husband's house.

7.0 P.W.-5-Ramchandbhai Shivramdas Patel, Sarpanch of village Nugar where the complainant was residing, was examined at Exhibit-39. He also supported the complainant's version that Lakshmi had stayed with the complainant for about ten months on account of dispute with her husband.

8.0 Dr. Rajeshkumar Bhailalbhai Shah-P.W.-1

who was examined at Exhibit-23, was Medical Officer at Civil Hospital, Mehsana. He had carried out post-postmortem of deceased Lakshmi. He had found that she had died on account of consumption of poisonous substance called Alumunium Phosphite. He produced the post-postmortem report at Exhibit-24. According to his deposition and the contents of the post-postmortem report, he had found following injuries on the body of the deceased,

(1) Blood clotting of 3 c.m. diameter on the lower 1/3 portion of the right leg,

(2) 3 c.m. X 2 c.m. of blood clotting on the left knee,

(3)Black coloured blood clotting of 3 c.m. X 2.5 c.m. near the right knee,

(4) One scratch of 3.5. c.m. X 2 c.m. X 1.5 c.m. on the back portion of the neck.

8.1 In his opinion, injuries were antemortem.

9.0 Arvindbhai Bababhai Joshi-P.W.-8 who was

examined at Exhibit-44, was the I.O. who had carried out the investigation.

10.0 Before taking note of depositions of defence witnesses and documents produced by them, it would be necessary to take note of the contents of the note-Exhibit-29 said to have been recovered from the body of the deceased and stated to be in the handwriting of the deceased as well as that of letter Exhibit-31 received by the complainant from the deceased.

11.0 In the note-Exhibit-29, it is stated that the reason for dying is that today my husband had beaten me on account of which I left home at about 4:00 clock, from Kadi I went to Kalol and then returned to Mehsana. Please, ensure that maximum punishment is done to my husband. I could not bear the torture, and therefore, I have taken this step. I have one son which may be handed over to my family which is located at Nugar. My husband had beaten me after tying me up. I pity my son, but, the torture is

unbearable.

11.1 In letter-Exhibit-31, written by the deceased to her brother it is stated that I am being beaten since three days due to which I am taking this step. If I come to your house you would drop me back. The beating has become unbearable. I was beaten after being tied up. It is further stated that I first went to Kadi, then to Kalol and since I had no money, one gentleman gave me Rs.10/- and I sold a nose ring. If I had stayed back to take my son, I fear that I would be dead. False allegations were made against me.

12.0 The defence examined two witnesses. Jayantibhai Shankarbhai Patel-D.W.-1 who was examined at Exhibit-46, was the resident of village Kelisana and was holding the post of Talati-cum-Mantri. At the relevant point of time he was posted at village Boliya. In his deposition he has stated that about four or five days after the death of Lakshmi, he had gone to

village Kelisana at that time he had received two letters in covers. One of the letters was addressed to him which he had read. Another letter was addressed to one Sahadev Rabari which he did not open. Since letter addressed to him was with respect to Lakshmi's incident he handed over the letter to father-in-law of Lakshmi. The other letter was addressed to Sahadev Rabari was given to the father of the appellant since Sahadeve was appellant's friend.

12.1 In his cross-examination, he agreed that on the cover-Exhibit-47 which contained letter written to Sahadev Rabari, except, the stamp of the village Kelisana no other stamp was there. He stated that he could not identify handwriting of Sahadev Rabari nor of deceased Lakshmi nor could he state as to how the letter in question had come to his house. He admitted that on the cover containing the letter his address was not written. He admitted that till the date of his deposition he had not informed the police regarding the letters. He stated that he could

not identify Lakshmi's handwriting.

13.0 Haribhai Mangaldas Patel-D.W.2 who was examined at Exhibit-48, is father of the appellant. He stated that after the incident when he had gone to the house of the appellant while emptying an earthen water pot, one note came out which had got wet. He had dried it. It contained two letters. According to him, the letters were in the handwriting of Lakshmi. He had sent zerox copies thereof to the police. He could not produce the cover in which the letter was received by Jayanitbhai-D.W.-1.

13.1 In his cross-examination, he agreed that he had never seen Lakshmi writing anything. He also agreed that Lakshmi had not written anything in his presence and that she had never written any letter to him.

14.0 It is primarily on the basis of the above evidence that learned Advocates appearing for both the sides made detail submissions before me.

15.0 Having heard learned Advocates for the parties and having perused the evidence on record, it would emerge that the complainant-Mahendrabhai-P.W.-3 in his deposition narrated the background under which Lakshmi about an year and a half before the incident came to his house and stayed with him for nearly ten months. As per his version, Lakshmi was driven out of the house by the appellant and hence she had to stay with the complainant for nearly ten months. During this period, neither the appellant nor any of his family members had tried to contact the deceased. Eventually, the complainant took his sister to Kelisana. There, he collected a few residents of the village and tried to pursue the appellant not to ill-treat the lady. He had another occasion to meet his sister. That was shortly before the date of the incident. He had gone to his sister's house and she had told that she is being beaten regularly. He had once again tried to intervene and returned after admonishing his brother-in-law.

16.0 So far as the stay of Lakshmi with her brother for ten months is concerned, the version of the complainant is supported by P.W.-4-Shantilal Joitaram Patel. He had accompanied complainant to Kelisana along with Lakshmi after her extended stay at her brother's house. P.W.-5-Ramchandbhai Shivramdas Patel who is resident of village Nugar where the complainant resides, also gave similar account about the stay of Lakshmi with her brother and her subsequent return to her husband's house.

17.0 The fact that there were disputes between the deceased and the appellant quite sometime before the actual incident, thus, remains beyond doubt.

18.0 The deceased had narrated her plight in her letter to the complainant which was produced at Exhibit-31 along with the envelope Exhibit-30 in which the letter was received. She had given detailed account of the cruelty and also

specifically stated that despite her concerned for her son, it is not possible to her to live under such conditions. The complainant had identified handwriting of his sister. Therefore, even if one totally discards the presence of note- Exhibit-29 stated to have been found from the body of the deceased, the letter Exhibit-31 throws sufficient light on the background leading to suicide of the deceased.

19.0 The defence had tried to put forth the theory that deceased had affair with one Sahadev Rabari. It is also sought to be suggested that on account of the rejection of the deceased by Sahadev Rabari, she committed suicide. This theory, however, remains largely unproved. It may be recalled that through D.W.-1-Jayantibhai Shantibhai Patel who was holding post of Talati-cum-Mantri, the defence sought to produce and rely upon two letters allegedly written by the deceased. These letters were, according to the witness, received by him through post. The letter Exhibit-49, the witness agreed, was

addressed to one Sahadev Rabari. D.W.-1-Jayantibhai did not know Sahadev Rabari personally. He could not explain why the letter was delivered to him, though, it was addressed to Sahadev Rabari. He also could not explain satisfactorily why he handed over the said letter- Exhibit-49 to the father of the accused. He had not informed the police about the letter. He did not know the handwriting of deceased Lakshmi. All these circumstances would demonstrate that the theory of D.W.-1-Jayantibhai having received letter-Exhibit-49 is not possible to believe.

19.1 In so far as letter-Exhibit-51 is concerned, it is also not established by the defence that the same was written by the deceased. In fact, contents of this letter shows that the deceased committed suicide on account of cruelty of her husband. It is stated that on the night of 15th she was beaten severely. She would no longer bear the regular beating.

20.0 The theory that the deceased committed suicide on account of rejection by Sahadev Rabari is in stark contrast to the statement of the accused under Section 313 of the Criminal Procedure Code. In his statement, the accused sought to explain that on 15.06.1995, when he went inside his house for drinking water, he found his wife in the arms of Sahadev Rabari due to which he admonished both his wife and Sahadev Rabari. The deceased committed suicide on 16.06.1995. If on 15.06.1995, the accused had found the deceased and Sahadev Rabari in compromising position, the theory sought to be put forth by the defence in cross-examination that the deceased committed suicide on account of rejection of her affection by Sahadev Rabari stands demolished.

21.0 The defence sought to rely on certain letters stated to have been written by the deceased to her husband. Apart from the fact that D.W.-2-father-in-law of the deceased admitted in his cross-examination that he had never seen the

deceased writing anything or she had never written to him, and therefore, to my mind, the defence has failed to prove that the letters in question were written by the deceased herself, these letters do not carry any dates. It, therefore, remains, matter of conjecture as to when such letters were written. Any disclosure of affection by the deceased for her husband without any reference to the time as to when such letter were written, would not aid the defence.

22.0 A defence was also taken that there were no injury marks noticed on the body of the deceased by the panchas who had drawn the Inquest Panchnama which disproves the theory of the deceased having received physical torture and the same is also contrary to the medical evidence.

22.1 It may be recalled that 'Panchnama' records one injury on the thigh of the deceased. It may be that the said injury was seen by the lady panch and that she was not examined before the Court and therefore the counsel is justified

in contending that the prosecution did not establish from the 'Panchnama' before the Court that the body carried such injury. However, it is entirely different from stating that there were no injuries on the body of the deceased and that the medical evidence is contrary to the 'Panchnama', and therefore, not acceptable.

22.2 P.W.-1- Dr. Rajeshkumar, in his deposition, at Exhibit-23 had clearly pointed out that injury marks were there on the body of the deceased which is already noted in the earlier portion of the judgment. His evidence was on the basis of the post-postmortem report-Exhibit-24 which also noted such injuries. It, therefore, cannot be stated that the body of the deceased carried no ante-mortem injuries.

23.0 Under the circumstances, I find that the prosecution succeeded in establishing beyond reasonable doubt that the deceased was treated with cruelty by the appellant-original accused and cruelty was such that the deceased was driven

to commit suicide.

24.0 Under Section 113-A of the Evidence Act, once it is found that the married woman was subjected to cruelty and that at the time of her unnatural death, the marriage span was less than seven years, at the discretion of the Court a presumption can be drawn that such suicide was abetted by her husband or such relative of the husband who had subjected her to cruelty.

25.0 Taking aid of the said provision of the Evidence Act and independently also, I find that there was sufficient evidence on record to convict the appellant under Section 498(A) as well as Section 306 read with Section 107 of the Indian Penal Code.

26.0 In the result, the appeal fails. Stands disposed of. Bail bond stand canceled. The applicant is granted time up to **15th January, 2008** to surrender before the police.

(AKIL KURESHI,J.)

Umesh/